



Application made by the Solicitors Regulation Authority Board to the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007, for the approval of the SRA Amendments to Regulatory Arrangements (Red Tape Initiative - residual client balances) Rules [2014]

A Executive summary

1. This application is made to the Legal Services Board (LSB) for approval of changes to the SRA's regulatory arrangements to give effect to increasing the amount of monies SRA authorised firms can transfer out of a client account without the SRA's approval. The changes are part of the ongoing Red Tape Initiative which aims to remove outdated and unnecessary regulatory processes and requirements.
2. In outline, the changes:
 - increase the level at which firms can self-certify withdrawal of client balances which do not exceed £50 to £500, without seeking authorisation from the SRA;
 - replaces references to the "Charities Act 1993" with the "Charities Act 2011".

B Details of the SRA's current regulatory arrangements

3. Since October 2011 the SRA has adopted a proportionate and targeted approach to regulation. This regulatory approach focuses on the high level principles and outcomes that should drive the provision of services to clients. In the SRA Code of Conduct for example, we have replaced detailed rules with mandatory outcomes. This approach allows the SRA to focus on issues that really matter, whilst giving authorised firms and practitioners the freedom and flexibility to decide how best to deliver services in the context of managing their own risks.
4. Rule 20.1(j) of the SRA Account Rules 2011 provides for the withdrawal of client money that practitioners are unable to return to clients at the end of a retainer. These residual client balances usually arise because the client cannot be traced. Under the current rules, firms must apply to the SRA for authorisation to withdraw any residual balance over £50 but are able to withdraw balances of up to £50, subject to the requirements set out below. Money which is withdrawn must be donated to a charity chosen by the law firm.
5. In order to make unauthorised withdrawals, practitioners must comply with the following requirements:

- establish the identity of the owner of the money, or make reasonable attempts to do so;
 - make adequate attempts to ascertain the proper destination of the money, and to return it to the rightful owner, unless the reasonable costs of doing so are likely to be excessive in relation to the amount held;
 - pay the funds to a charity;
 - record the steps taken in accordance with the requirements above and retain those records, together with all relevant documentation (including receipts from the charity); and
 - keep a central register of withdrawals.
6. Practitioners must apply to the SRA for authorisation, whatever the amount involved, if the money to be withdrawn is not to be paid to a charity. This situation might arise, for example, if a practitioner has been unable to deliver a bill of costs because the client has become untraceable and so cannot make a transfer from client account to office account.

C Nature and effect of the proposed amendments to the SRA's regulatory arrangements

7. The SRA amendments to Regulatory Arrangements (Red Tape Initiative-residual client balances) Rules [2014], annexed to this application, were made by the SRA Board on 2 July 2014, subject to approval by the LSB. The amendments have been consulted on and are part of the SRA's ongoing Red Tape Initiative.
8. The effect of the amendment rules in relation to each proposal is set out below.

Increasing the maximum value of unauthorised withdrawals to £500

9. The SRA Board has amended Rule 20.2 of the SRA Accounts Rules 2011 to increase the amount of residual client balances that firms can withdraw out of client account without the SRA's authorisation from £50 to £500.
10. The SRA will retain oversight for the withdrawal of residual client balances over £500. In accordance with the SRA Accounts Rules 2011 the firm will be responsible for taking the steps set out in paragraph 5, when transferring client balances which do not exceed £500. The SRA has developed guidance for firms on withdrawing residual client balances which will assist practitioners in complying with their duties. This guidance will be published in October 2014, subject to the LSB approving this application.
11. The effect of this change is that it will remove the burden of firms requiring authorisation from the SRA to remove relatively low level funds from client accounts. This will account for approximately 750 applications being made to the SRA, covering 5,000 individual residual client balances per year.
12. The change also supports the SRA's commitment to proportionate regulation, as the SRA will only be authorising residual client balance transfers which exceed £500.

Update to the SRA Handbook glossary definition of "charity"

13. The SRA Board has amended the SRA Handbook glossary definition of "charity" to reflect the changes in legislation. Therefore, "section 96(1) of the Charities Act 1993" will be replaced with "section 1 of the Charities Act 2011."
14. The consequential effect of this change is that the SRA Board has amended Regulation 3.1(r) of the SRA Practising Regulations 2011 and Requirement 10.1(a) of the SRA Suitability Test 2011 so that they refer to up to date legislation.

D Rationale for amendment

15. The proposal to increase the level at which firms can self-certify the withdrawal of residual client balances was suggested by contributors of the Red Tape Initiative. In July 2013 it was agreed that the proposal would be part of the ongoing Red Tape Initiative. The Red Tape Initiative aims to remove, curtail or simplify regulations and processes. Furthermore, on the 7 May 2014, the SRA published, a [policy statement](#) on its approach to regulation and reform. The SRA's revised approach to regulation intends to remove unnecessary regulatory barriers and restrictions, reduce unnecessary regulatory burdens and costs and ensure that regulation is properly targeted and proportionate.
16. The current regulatory provisions:
 - place unnecessary regulatory burdens on firms because they are required to make an application to the SRA to transfer client balances above £50;
 - are not proportionate as they require the SRA to approve all firm transfers of client balances above £50; and
 - are out of date, as they include references to the Charities Act 1993 which was repealed by the Charities Act 2011.
17. The rationale for amending the SRA Account Rules 2011 to increase the level at which practitioners can self-certify client balances from £50 to £500 without seeking the SRA authorisation is for the following reasons:
 - to reduce the regulatory burden **on firms** by allowing them to self-certify the withdrawal of client money without the requirement to seek authorisation from the SRA. A recent sampling exercise by the SRA indicated that approximately two thirds of applications were for balances of between £51 and £500; and
 - reducing **the SRA's** administration, costs and bureaucracy by removing the need to consider applications for the removal of client money on balances under £500.
18. The rationale for amending the SRA Handbook glossary definition of "charity" is to ensure that our regulatory arrangements reflect most recent legislation. The amendment to the SRA Handbook glossary definition of "charity" has led to consequential amendments to the SRA Practising Regulations 2011 Regulation 3.1(r) and the SRA Suitability Test 2011 Requirement 10.1(a) so that they refer to up to date legislation.

E Statement in respect of the LSA Regulatory Objectives

19. The SRA must, so far as is reasonably practicable, act in a way that is compatible with the regulatory objectives set out in the Legal Services Act 2007, and in a way that it considers to be most appropriate for the purpose of meeting those objectives. The SRA Board is satisfied that the amendments it has made are compatible with the regulatory objectives and represent an appropriate means of meeting them.

Protecting and promoting the public interest

20. The proposed amendments are considered to have a neutral effect on this regulatory objective.

Supporting the constitutional principle of the rule of law

21. **Increasing the maximum value of unauthorised withdrawals to £500** - the proposed change to the rules are considered to have a neutral effect on this regulatory objective.
22. **Update the SRA Handbook glossary definition of "charity"** - the proposed amendments will mean that the SRA Handbook makes reference to most recent legislation.

Improving access to justice

23. The proposed amendments are considered to have a neutral effect on this regulatory objective.

Protecting and promoting the interests of consumers

24. **Increasing the maximum value of unauthorised withdrawals to £500** - the proposed change to the rules is considered to have no foreseeable negative impact on this regulatory objective. Firms will continue to be required to make attempts to trace the client to return residual client balances under £500. The impact on consumers is therefore, minimal due to the existing requirements on firms to comply with the SRA Accounts Rules 2011 and for Compliance Officers for Finance and Administration to have in place systems and procedures to ensure compliance with the Rules. If a firm fails to take reasonable steps to trace the client and they have obtained no indemnity from the charity, then the firm would be liable to repay the money should the client subsequently re-appear. (In such a case, if the firm no longer existed and there was no successor practice, then a claim could be made by the client on hardship grounds from the SRA Compensation Fund).
25. **Update the SRA Handbook glossary definition of "charity"** - the proposed amendments are considered to have a neutral effect on this regulatory objective.

Encouraging an independent, strong, diverse and effective legal profession

26. **Increasing the maximum value of unauthorised withdrawals to £500** - the proposed rule change will allow firms to independently manage the transfer of residual client balances under £500 without seeking authorisation from the SRA.

27. **Update the SRA Handbook glossary definition of "charity"** - the proposed amendments are considered to have a neutral effect on this regulatory objective.

Increasing public understanding of the citizen's legal rights and duties

28. The proposed amendments are considered to have a neutral effect on this regulatory objective.

Promoting and maintaining adherence to the professional principles

29. The proposed amendments are considered to have a neutral effect on this regulatory objective.

F Statement in respect of the Better Regulation Principles

30. The SRA considers that the alterations requested fulfil our obligation to have regard to the Better Regulation Principles under section 28 of the Legal Services Act. The amendments are considered to be proportionate and targeted in a way that achieves the necessary level of protection for consumers and the public interest with an appropriate level of regulation.
31. The SRA has consulted publicly on the proposed changes and taken account of the views of stakeholders in developing the amendments to the SRA Handbook. It has therefore acted in an accountable way in developing this change to the regulatory arrangements and, subject to approval by the Legal Services Board, will ensure that changes are published and implemented transparently.

G Statement in relation to desired outcomes

32. The SRA desired outcome is to have in place a regulatory framework that is designed to ensure that regulation is properly targeted and proportionate, reduces unnecessary regulatory burdens and costs, removes unnecessary regulatory barriers and restrictions and enables increased competition, innovation and growth.

H Stakeholder engagement

33. The SRA published a formal consultation setting out our proposals on the 31 March 2014. The consultation was designed to give all those we regulate, users of SRA-regulated legal services and others with an interest in legal regulation the opportunity to comment.
34. The closing date for responses was on the 26 May. There were 97 respondents to the consultation from a variety of stakeholders. A copy of the report on the responses to the formal consultation is included in the SRA Board paper.
35. There was universal support from all of the respondents for the proposal to increase the level at which practitioners can self certify withdrawals of client balances. The great majority of respondents favoured the SRA increasing the self certification level to £500.
36. Respondents to the consultation, including The Law Society, also agreed that the draft guidance relating to withdrawal of residual client balances provided clarity in relation to the requirements.

I Statement in relation to impact on other Approved Regulators

37. We do not consider that there is any impact on any other Approved Regulator under the Legal Services Act 2007 of any of the SRA's proposals.

J Implementation timetable

38.

14 July 2014	Application for approval of the SRA Amendments to Regulatory Arrangements (Red Tape Initiative - residual client balances) Rules [201]4
31 October 2014	Proposed change to be implemented in version 11 of the SRA Handbook

K SRA contact for matters relating to this application

39. If the Board have any queries in relation to this application please contact:

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L Further explanatory information

Annex 1 SRA Amendment to Regulatory Arrangements (Red Tape initiative - residual client balances) Rules [2014]

Annex 2 SRA Board paper on the Red Tape Initiative - Residual Client Balances, 2 July 2014 (attached separately)

SRA Amendment to Regulatory Arrangements (Red Tape initiative - residual client balances) Rules [2014]

Preamble

Rules dated [date of approval by the Legal Services Board] made by the Solicitors Regulation Authority Board under sections 28 31, 32, 79 and 80 of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985, section 89 of and Part 1 of Schedule 14 to the Courts and Legal Services Act 1990 and section 83 of, and Schedule 11 to, the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

Rule 1

The SRA Accounts Rules 2011 shall be amended as follows:

- (a) In Rule 20.2 replace "£50" with "£500"
- (b) In the Guidance notes to Rule 20, amend note (vi) (a) by replacing "£50" with "£500"

Rule 2

The SRA Handbook Glossary 2012 shall be amended as follows:

Amend the definition of "**charity**" by replacing "section 96(1) of the Charities Act 1993" with "section 1 of the Charities Act 2011"

Rule 3

The SRA Practising Regulations 2011 shall be amended as follows:

In Regulation 3.1(r) replace

"The applicant has been removed from the office of charity trustee or trustee for a charity by an order within the terms of section 72(1)(d) of the Charities Act 1993"

with

"The applicant is disqualified from being a charity trustee or trustee for a *charity* under section 178(1) Case D or E of the Charities Act 2011"

Rule 4

The SRA Suitability Test 2011 shall be amended as follows:

In Requirement 10.1 (a) replace "*you* have been removed from the office of trustee for a charity by an order imposed by the Charities Act 1993"

with

"*you* are disqualified from being a charity trustee or trustee for a *charity* under section 178(1) Case D or E of the Charities Act 2011"

Rule 5

These amendments shall come into force on 31 October 2014.